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Supreme Court of Wisconsin

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June 4, 2021

To:

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You are hereby notified that the Court, by its Clerk and Commissioners, has entered the following order:

No. 2021AP360-CRLV State v. Killinger L.C. #s 2020CF1162 and 2020CF1315

Mitchel Jay Killinger is an inmate in the Brown County jail. In a document titled "Appeal to Supreme Court en banc" and a supporting affidavit, Mr. Killinger asks this court to reconsider its May 13, 2021 order, which denied his "Motion to Vacate and For Enlargement of Time Limits," which itself challenged this court's May 3, 2021 order dismissing his petition for review as untimely.

As set forth in this court's previous orders, Mr. Killinger's petition to review the court of appeals' March 2021 decision was on due April 22, 2021. The clerk of court received, by hand delivery, Mr. Killinger's petition for review on April 26, 2021. The court dismissed the petition as untimely pursuant to Wis. Stat. §§ 808.10 and 809.62(1m) and First Wis. Nat'l Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979). See May 3, 2021 order.

Page 2

June 4, 2021

No. 2021AP360-CRLV State v. Killinger L.C. #s 2020CF1162 and 2020CF1315

In his “Motion to Vacate and For Enlargement of Time Limits,” Mr. Killinger explained that on or about April 15, 2021, in advance of the April 22nd filing deadline for his petition for review, he placed his petition for review in the institution’s mailbox for forwarding to Federal Express for copying and delivery to the clerk of court. In our May 13, 2021 order, we explained that this act did not make his petition for review timely; to get the benefit of the mailbox tolling rule, Mr. Killinger needed to properly address the filing to the correct court filing address. See State ex rel. Kelley v. State, 2003 WI App 81, 261 Wis. 2d 803, 661 N.W.2d 854. He instead addressed it to a third party for copying and delivery.

In his “Appeal to Supreme Court en banc,” Mr. Killinger concedes that the mailbox tolling rule “does not apply to this situation,” as he “do[es] not claim [his petition] was addressed to the Court.” He “argu[es] for additional time based on good cause”; namely, that his late filing was caused by the jail’s delay in mailing his petition for review to Federal Express—a circumstance that “was clearly beyond my control and wholly unintentional.” Mr. Killinger also notes that the State has not raised a timeliness objection.

IT IS ORDERED that Mr. Killinger’s “Appeal to Supreme Court en banc” is denied. The deadline for filing a petition for review may not be extended. First Wis. Nat’l Bank of Madison, 87 Wis.2d 360 at 365. Once the April 22nd filing deadline passed without Mr. Killinger filing any document that could be construed as a petition for review, this court lost jurisdiction. Id. at 364-65. Lack of jurisdiction “is not subject to waiver, and will be raised by this court sua sponte.” Id. at 364.

Sheila T. Reiff
Clerk of Supreme Court